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No. 634

In The Supreme Court
Of The United States

OCTOBER TERM, 1959

GEORGE H. BRASIER, - - - - - Petitioner

vs.

CITY OF TULSA, OKLAHOMA - - - Respondent

OBJECTION TO PETITION FOR WRIT OF CERTIORARI

Charles E. Norman
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Darven L. Brown
Henry Kolbus
John W. Sublett

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The Municipality could not be guilty, as a matter of law, of a conspiracy while acting in a governmental capacity.

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1. Ex parte Duncan, 179 Okl. 353, 65 P. 2d. 1015. 2
2. McGuire v. Wilkerson, 22 Okl. Cr. 36, 209 P. 445. 2
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PROPOSITION No. 2. 3

This Court will not pass on questions not raised or dealt with by the Court of Appeals. The question of the validity and constitutionality of the ordinance was not raised and, therefore, was not passed on by the Court of Appeals.

Authorities

1. Owens v. Union Pac. R. Co., Wash. 1943, 63 S. Ct. 1271, 319 U. S. 715, 87 L. Ed. 1683, certiorari denied 65 S. Ct. 57, 323 U. S. 740, 89 L. Ed. 593. 3
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STATEMENT

Petitioner pitched his right to recover the exhorbitant damages prayed for upon the theory that the Civil Rights Acts were applicable and that the City was guilty of a conspiracy to deprive him of his automobile. The Civil Rights Acts, in the main, have to do with intimidating jurors and keeping Negroes from voting.

Petitioner did not challenge the validity or constitutionality of the ordinance, which impounded his automobile as a nuisance, either in the Trial Court or the Court of Appeals. On the contrary, he affirmed in open court at the trial—page 20 of the transcript—that he did not question the constitutionality of the ordinance. He did likewise in his oral argument in the Court of Appeals, as is set forth in the Opinion of that Court. Petitioner dealt in glittering generalities, made reference to the 'Due Process' Clause of the Constitution, but failed to show wherein same was applicable to him in this conspiracy suit for damages.

The Trial Court required the City to file answers to all interrogatories. The answers were clear and definite. These show beyond cavil the violations of the ordinance, after warning, called

for action upon the part of the policeman in the discharge of his duty. Petitioner had plain, adequate and complete remedies. He elected not to defend in the Municipal Court. He elected not to put up $20.00 which is the maximum bond on violations of this kind in the Municipal Court. He elected not to bring a replevin suit or a conversion suit. He elected not to challenge the validity of the ordinance in either State or Federal Court, but sought large money judgment because of an alleged conspiracy on the part of the Mayor and the Commission, acting upon the part of the City of Tulsa, to deprive him unlawfully of his automobile. Nothing could have been farther from the truth. The City's position was so recognized and approved by the Trial Court and the Appellate Court. The petitioner stood as any other citizen, amenable to the Law and Order of the City of Tulsa in his unlawful use of his automobile.

ARGUMENT

Proposition 1. The Municipality could not be guilty, as a matter of law of a conspiracy while acting in a governmental capacity.

Both the Trial Court and the Appellate Court have ruled adversely to petitioner. The decisions so holding are:

1. Ex parte Duncan, 179 Okl. 353, 65 P. 2d 1015
2. McGuire v. Wilkerson, 22 Okl. Cr. 36, 209 Pac. 445
3. 174 Okl. 416, 50 P. 2d 712, Savage v. City of Tulsa
4. Bottone v. Lindsley, et al., 170 Fed. Rep. 2d 705, 10th Cir. This decision quoted again by Court in its present Opinion.
5. Agnew v. City of Compton, 239 F. 2d 226 (Cal. 9th Cir.)

This case was taken to the Supreme Court of the United States by a writ of certiorari, on the 13th day of May, 1957, same was denied. 77 S. Ct. 868, 1 L. ed. 910, 353 U. S. 969. The Civil Rights Acts were invoked in this case.

6. Cobb v. City of Malden, et al., 202 F. 2d 701 (Mass., 1st Cir.).

7. Hewitt v. City of Jacksonville, (Fla., 5th Cir.) 188 F. 2d 423. A writ of certiorari was denied.. 72 S. Ct. 58, 96 L. Ed. 631, 242 U. S. 835.

Proposition 2. This Court will not pass on questions not raised or dealt with by the Court of Appeals. The question of the validity and constitutionality of the ordinance was not raised and, therefore, was not passed on by the Court of Appeals.

Owens v. Union Pac. R. Co., Wash. 1943, 63 S. Ct. 1271, 319 U.S. 715, 87 L.Ed. 1683, certiorari denied 65 S. Ct. 57, 323 U.S. 740, 89 L.Ed. 593.

Sonzinsky v. U. S., Ill. 1937, 57 S.Ct. 554, 300 U.S. 506, 81 L. Ed. 772.

Respondent therefore respectfully suggests that the Petition herein for Writ of Certiorari should be denied.

Respectfully submitted,

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Luther P. Lane
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John W. Sublett